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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4521 of 1990

Mrs. Mangala Vasant Yadav
R/at: 6/11, Mangala Laman Housing
Society, Nehrunagar, Solapur. ..Petitioner

V/s.

The Poona Sevasadan Society
614-64, Sadashiv Peth, Pune.

(Through its Secretary)

2. The Secretary,
Poona Sewasadan Society,
Solapur Branch, Solapur.

3. The Chairman,
School Commitee,
Sevasadan High School,
Solapur.

4. The Headmistress,
S.R.Girls' High School,
Solapur.

5. Smt. Jyotsana Laxman Ghotkar
Sevasadan Girls High School,
Morarji Peth, Solapur.

6. Shri D.S.Jagtap,
The Presiding Officer,
School Tribunal,
Pune Region, 17 Dr.Ambedkar Road,
Pune-1. ..Respondents

Mr.S.S.Patwardhan, Advocate for the Petitioner
Mrs. Aarti Bhide, Advocate for Respondent Nos.1 to 4
Mr.N.V.Bandiwadekar, Advocate for Respondent No.5

CORAM : B.H.MARLAPALLE,J.
DATED : 13th & 20th December, 2007

ORAL JUDGEMENT

Though this Petition is claimed to have been filed under Article 226 and 227 of the Constitution, the same is being treated under Article 227 only having regards to the reliefs prayed for in the petition. The Petition arises from the Judgement and Order dated 15-9-1990 rendered by the School Tribunal at Pune whereby dismissing the Appeal No.105/1989 filed by the present Petitioner challenging the appointment of Respondent No.5 to the post of Assistant Head Mistress w.e.f. 1-10-1989 at the Girls High School at Solapur. The cause for filing the appeal arose on 1-8-1987 and Section 9 of the MEPS Act was amended with effect from 7-8-1987 so as to provide for a remedy to apply in case of supersession as alleged as per the Maharashtra Employees of Private Schools (Conditions of Service) Regulations(Amendment) 1987.

2. The Petitioner held the qualifications of B.A. B.Ed and she came to be appointed as an Assistant Teacher from 10-7-1981 as per the appointment order dated 9-7-1981. The Respondent No.5 with the same qualifications of B.A. B.Ed came to be appointed as an Assistant Teacher with effect from 16-8-1982. It appears both of them were not given the pay scale of

trained graduate teacher. The Respondent management appointed one Mr. Ramesh Phulari with effect from 31-12-1985 as a trained graduate teacher with the same qualifications of B.A. B.Ed and the Petitioner by her representation dated 2-1-1986 pointed out to the management that she was holding the very same qualifications and she ought to have been given the pay scale of trained graduate teacher rather than somebody being appointed from outside. She also pointed out that the justification for Mr. Ramesh Phulari being appointed in trained graduate teachers pay scale from 31-12-1985 as he was to teach English subject was not proper and convincing because Shri Arvind Kulkarni with M.A. B.Ed degrees and had English subjects as optional but he was never assigned teaching of English subjects at the Secondary level. On 1-10-1989 Shri Talvalkar who was working as a Head Master of the Respondent No.4 School retired and in his place the next senior most teacher Smt. Mayeskar was appointed. Consequently, the post of Assistant Head Mistress which was held by Mrs. Mayeskar fell vacant and the Respondent management appointed Respondent No.5 to the said post w.e.f. 1-10-1989, which appointment the petitioner challenged as noted earlier by filing an Appeal under Section 9 of the MEPS Act, 1977.

3. The Respondent Management filed its written-statement and opposed the appeal. However, it appears that Respondent No.5 did not file any written statement to oppose the appeal. The management contended that (a) both the Petitioner and Respondent No.5 were appointed in the primary class of the High School in D.Ed scale and were in B category, (b) the Petitioner was senior to the Respondent No.5 in the B category, (c) on the representation submitted by Respondent No.5 she was granted a trained graduate teacher's pay scale w.e.f. 1-8-1987 (in the academic year 1987-88 whereas on the representation of the petitioner in the academic year 1988-89, she came to be given the trained graduate teachers' pay-scale w.e.f. 13-6-1988, (d) in category 'C', the Respondent No.5 was senior and in the seniority list published in the academic year 1997-98 she was shown senior to the Petitioner which was never objected to by her and (e) on the petitioner being given the impugned category 'C' as stated in Schedule F to the MEPS Rules, 1981, a fresh list was published and the Respondent No.5 was shown at sr. no.69 whereas Petitioner was shown at sr. No. 17 and this was again not objected to by the Petitioner. In short it was contended by the management that Respondent No.5 being senior to the Petitioner as a trained graduate teacher, it proceeded to appoint

Respondent No.5 to the post of Assistant Head Mistress. The School Tribunal has accepted the plea of the management and has further relied upon the circular dated 23-11-1983 (exh.23) to held that Petitioner was junior to Respondent No.5 as a trained graduate teacher. The Tribunal further held that the Judgement of this Court (Division Bench) in the case of Saramma Verghese V/s. Secretary, SICES Society (1989 Mh LJ 951 was not applicable and thus it confirmed the appointment of Respondent No.5 to the post of Assistant Head Mistress. The Tribunal also considered the appointment letter issued to the Petitioner (exh.28) and held that the Petitioner was appointed to teach primary classes (standards Vth to VIIIth) in the SSC+D.Ed scale and the petitioner could not be treated to be a trained graduate teacher till she was granted the pay scale as applicable to the trained graduate teacher. The Tribunal also referred to the application dated 20-6-1981 submitted by the Petitioner (exh. 24) and noted that the said application was for the post of Assistant Teacher in SSC+D.Ed scale.

4. Mr.Patwardhan, the Learned Counsel for the Petitioner has referred to the provisions of Rule 12, Schedule B and Schedule F of the MEPS Rules, 1981 and submitted that the Petitioner having been appointed

right from the first date in the secondary school, her seniority was required to be maintained from that date and not from the time she was granted trained graduate pay scale. As per Mr. Patwardhan, the Petitioner and Respondent No.1 ought to be treated as trained graduate teachers right from the initial date of their appointment and the seniority list for all the teachers in the Respondent No.4 school ought to have been drawn only on that basis rather than making a distinction on the basis of the date of entry in category C in Schedule F. He further submitted that the Tribunal was in gross errors in holding that the law laid down by this Court in the case of Verghese (supra) was not applicable.

5. Mr.Bandiwadekar, the Learned Counsel for the Respondent No.5 has supported the impugned Judgement of the Tribunal and contended that by the Petitioner's own admissions, Respondent No.5 was senior to her in category C and at no point of time the seniority published by the management was challenged by the Petitioner either by submitting a representation to the management or the Education Officer. Having accepted the same seniority list, it was not permissible for the Petitioner to challenge the appointment of Respondent No.5 for the post of Assistant Head Mistress and the facts in the case of Verghese (supra) could be

distinguished, as per Mr. Bandiwadekar.

6. The Learned Counsel for the Respondent Nos. 1 to 4 has also supported the arguments advanced by Mr. Bandiwadekar and has further stated that once the issue of seniority remained unchallenged, the Tribunal rightly proceeded to reject the Petitioner's claim. It was also pointed out that during the pendency of this petition, the Respondent No.5 was further promoted to the post of Head Mistress w.e.f. 20-11-1990 and for the last about 17 years she is holding the same post. When this petition was admitted on 29-10-1990, there was no stay granted nor any interim order was passed in favour of the Petitioner and obviously as the management was not prevented from acting on the Judgement rendered by the School Tribunal, it proceeded to fill in the post of Head Mistress as per the Rules, and appointed Respondent No.5 who was holding the post of Assistant Head Mistress.

7. When the Petitioner approached the School Tribunal, her main grievance was supersession in the appointment of Assistant Head Mistress. As per Rule 5(2) of the MEPS Rules, for the appointment of Assistant Head, the qualifications set out for the post of Head shall apply which means the senior most teacher subject to the

satisfactory service record has the claim, unless such a teacher relinquishes the same in writing. Therefore, the issue of inter se seniority was required to be adjudicated by the Tribunal and it being an ancillary issue to the main issue of supersession, the Tribunal proceeded to adjudicate upon the same and this approach of the Tribunal is duly supported by the Judgement of this Court **(Division Bench) in the case of Umesh V/s. State of Maharashtra & others reported in 2001(2) Bombay CR page 145.**

8. The main question that arises for consideration is whether the Respondent No.5 could be treated to be senior to the petitioner only because she was granted the trained graduate teachers' pay-scale prior in time by the management and more so when the management contended such a benefit was granted on the basis of the representation made by the teacher and whosoever made the representation earlier was granted the benefit earlier and also be keeping in mind the fact that both of them were, though qualified to be appointed in the pay scale of trained graduate teacher, in fact appointed in the scale of SSC+D.Ed.

9. The term "trained teacher" as defined in Rule 2(k) of the Rules, means a teacher who has secured a

professional certificate, a diploma or a degree recognised by the Department which qualifies him for a teaching post in a school. The term "trained graduate" as defined under Rule 2(j) of the Rules, means a person possessing the qualifications mentioned in sub-sections (i)to (vi) of clause (1) of of item II in Schedule B.

10. Note 2 in Schedule F states that the following training qualifications which can be secured 2 years after SSC examinations shall be considered as training qualification for the purpose of seniority even after 1-10-1970.

Note 3 in the said Schedule states that in the case of teachers whose date of continuous appointment in one and the same category is common, the teacher who is senior by age will be treated as senior.

Note 1 states that for the purpose of category C,D & E teachers with S.T.C.,T.D.Jr.P.T.C.Dip.T.,Dip.Ed. (post of S.S.C. one year course) qualifications appointed on or after 1-10-1970 shall be considered as untrained and their seniority shall be fixed in the ' F' or 'G' category of untrained teachers as the case may be.

"Department", means the Education Department of the Government of Maharashtra.

11. It is thus clear that the contentions of the management that both the Petitioner and Respondent No.5 were appointed in category 'D' initially are grossly erroneous. Both of them were undoubtedly trained graduate teachers. It is also not in dispute that the Respondent No.4 School is an integrated school from 1st Standard to Xth standard and there was only one Head Master. Rule-12 of the MEPS Rules provides for guidelines for drawing seniority list of staff including Head Master, Assistant Head Master and the non-teaching staff in a Private School and the guidelines are more particularly specified in Schedule F. In the said Schedule it has been stated that the seniority of any school teacher shall be based on the date of joining service and continuous officiation whereas the teaching staff of the Secondary schools has been classified into different categories for the fixation of seniority. Categories A,B,C,D,E,F,G&H represent the cadre of seniority so that the teachers in category A are necessarily senior to those category B and those in category C are senior to category D and so on and so forth. Category A & B represent Heads of Secondary Schools having an enrolment of students above 500 and below 500 respectively. Category C which is relevant to this case covers the teachers holding graduate and/or post graduate degree alongwith the degree or diploma in

teaching/education. Schedule F also shows that the teachers who have the qualifications of graduation or post graduation but do not hold the D.Ed/B.Ed qualifications, rank as untrained teachers and they may fall in category F or G. Teachers holding the B.A./B.Sc/B.com alongwith B.Ed and D.Ed, of these equal qualifications rank together. This Court (Division Bench) in the case of Saramma Varghese (supra) held that a teacher with B.A.B.Ed. degree wherever he teaches will take his place according to the date of appointment and continuous officiation. On analysing the provisions of the Act, Rules and Secondary School Code, the Division Bench laid down the following principles regarding the seniority of Secondary school teachers.

(a) The Act and the Rules clearly stipulate that all teachers having B.A., B.Ed. or B.Sc.B.Ed rank together for the purposes of fixation of seniority.

(b)The Act, rules or the Code make no distinction based on the Division of the School in which a teacher teaches. The only distinction made is between permanent and temporary teachers.

(c) the Rules and the Code reject the relevance of pay scale for the purpose of seniority.

(d) For the purpose of appointment of Head Masters and Supervisors in the S.S.C. level Schools, the trained teachers with M.A./M.Sc/M.Com. are considered equal to trained teachers with B.A./B.Sc./B.Com. degree. Therefore, a higher academic qualification too is not relevant for fixation of seniority of trained teachers and lastly;

(e) the only criterion for fixation of seniority of trained graduate teachers is the continuous officiation in such post of teacher, depending upon, their position on the ladder.

12. In para-24 in the case of Saramma V/s. S.I.C.E.S. Society, the Division Bench stated as under:

"The Act, the Rules and the Code have made the Petitioner and Respondent No. 5 equal in all respects for the purpose of fixation of seniority for the simple reason that they fall in the same category-graduate teachers with B.Ed. There is a clear statutory rejection of the Respondents' contention that the Respondent No.5 is senior to the Petitioner because she draws a higher pay.

> Similarly, the Act, Rules and the Code do not admit of any distinction based on the division in which the Petitioner or the Respondent No.5 teaches. This immediately negatives the claim of the Respondents that the Respondent No.5 is senior to the Petitioner because the former teachers in what the Respondents call the Higher Division. Such distinction is alien to the Rules and the Act. Once a person is a graduate teacher with B.Ed. degree, she ranks in seniority according to the date of continuous officiation. The Legislature and the authors of the Code have so strongly asserted the equality of the Petitioner and the Respondent No.5 that they thought it necessary to declare that the appointment in a higher scale of pay or possession of post-graduate degree is not relevant. We have no doubt that the petitioner is senior to the Respondent No.5."

13. Mr. Patwardhan, the Learned Counsel for the Petitioner submitted that the law laid down by the Division Bench in Saramma (supra) is squarely applicable to the facts of this case in as much as the Petitioner and Respondent No.5 held the qualifications of B.A.B.Ed. when they were initially appointed as

Assistant Teachers by the Respondent No.2.

14. As noted earlier the Petitioner and Respondent No.5 ought to be held as trained graduate teachers from the date of their initial appointment as defined under the Rules and the Rules do not recognise such teachers being appointed in S.S.C. + D.Ed scale. The Tribunal was in error in accepting such a contention put forward by the management stating that initially both of them were appointed in the D.Ed scale. Though the seniority list for the primary teachers is based on the date of joining service and continuous officiation, there was no reason to hold that the Petitioner and Respondent No.5 were the primary teachers from the date of their initial appointment. Infact as per the law laid down by the Full Bench of this Court in the case of **Jayshree Sunil Chawan V/s. State of Maharashtra 2000 (3) Mh.L.J. 605 (Full Bench)** none of them were qualified to be appointed as primary school teachers, as they did not hold the D.Ed qualification.

15. In addition the Petitioner had submitted a representation way back on 2-1-1986 pointing out that Mr. Ramesh Phulari could not have been appointed as a trained graduate teacher when she herself was a trained graduate teacher and the justification given by the

management that Mr. Phulari was appointed to teach English subject was misleading. Before the School Tribunal, there was no material brought on record to show that the Respondent No.5 was teaching in the Secondary Section and the Petitioner was teaching in the Primary section all along till both of them were placed in the regular pay scale of trained graduate teachers. The management also did not contend before the School Tribunal that vacancies arose for the first time in the academic year 1987-88 and 1988-89 so as to accommodate Respondent No.5 and the Petitioner respectively in the said pay scale. On the other hand, the management reiterated that whosoever made the representation first was granted the said pay scale. Irrespective of the pay scale awarded to the Petitioner and Respondent No.5, it is required to be held that right from their initial date of appointment, they were trained graduate teachers and they were in category C and it is an artificial arrangement resorted to by the management saying that Respondent No.5 was brought into the said category w.e.f. 1-8-1987 and the Petitioner was given the same benefit w.e.f. 13-6-88.

16. There is one more facet which was either not agitated before the School Tribunal or it escaped from considerations. When it comes to promotion to the post

of Assistant Head Mistress under Rule-5, sub-rule 2 therein states that the provisions of Rule-3 relating to the qualifications and appointment of Head shall, mutatis mutandis, apply to the post of an Assistant Head and Supervisor. Rule 3(1)(b) prescribes the requirement of qualifications and experience for the appointment of Head of the School and it states that the essential qualifications would be graduation with a Bachelor's Degree in teaching or education of a statutory University or any other qualification recognised by the State Government as equivalent thereto and the teacher must possess not less than 5 years total full time teaching experience after graduation in a secondary school. If the stand taken by the management is accepted, it is clear that neither Respondent No.5 nor the Petitioner were qualified to be appointed to the post of Assistant Head Mistress as on 1-10-1989 as none of them had 5 years teaching experience in a Secondary School, if it is presumed that both of them were primary school teachers. But this was not the case pleaded by the management before the School Tribunal and the Tribunal had proceeded on the basis that both of them were eligible for such an appointment but Respondent No.5 was senior as she had entered category C earlier than the Petitioner. This view is contrary to the law laid down by the Division Bench in Saramma's case(supra)

which decision the School Tribunal observed that it was not applicable and, therefore, Mr. Patwardhan is right in his submissions that the Tribunal fell in gross error on this count.

17. At the sametime the appointment to the post of Assistant Head Mistress is not automatic purely on the basis of seniority. Satisfactory service record during the last five years is one of the necessary requirements as are applicable for promotion to the post of the Head of the School. Even this ground had not been taken up by the management while opposing the Petitioner's claim. The School Tribunal accepted the management's contention that Respondent No.5 was senior and,therefore, she was rightly granted the promotion to the post of Assistant Head Mistress. However, as noted earlier, the Tribunal failed to appreciate the law laid down in Saramma's case. Having regards to the said decision, in the instant case the seniority of the Petitioner and Respondent No.5 will have to be counted from the first date of appointment i.e. 10-7-1981 and 16-8-1982 respectively as both of them had the qualifications of B.A., B.Ed. when they were appointed as Assistant Teachers from those respective dates.

18. Mr.Bandiwadekar pointed out that during the last 17

years, the Respondent No.5 has been discharging the responsibility of the Head of the School and satisfactorily too. Though this is an aspect which requires to be taken into consideration but that by itself would not defeat the Petitioner's claim. The date of birth of Petitioner is 1-7-1952 whereas the date of Respondent No.5 is 22-1-69 and, therefore, Respondent No.5 may get an opportunity in future to occupy the post of Head Mistress.

19. In the premises this Petition succeeds and the impugned order passed by the School Tribunal in Appeal No. 105/1989 is hereby quashed and set aside. The Management i.e. Respondent No. 1 & 2 are hereby directed to draw a fresh seniority list as on 30-9-1989 of the teachers in all the Schools run by it on the principles set out hereinabove as well as by following the Judgement in Saramma's case (supra) within a period of two months from today and submit the same to the Education Officer (Secondary) Zilla Parishad, Solapur. The Education Officer shall consider the Seniority list and finalise the same after inviting objections if any from the teachers in all the schools within a period of 3 months from the date the draft seniority list is submitted by the management. The claim for the post of Head of SR Girls High School shall be considered by the

management afresh on the basis of the said seniority list and other qualifications set out in Rule-3 of the MEPS Rules within a period of one month from the date it receives the final seniority list from the Education Officer. In such fresh selection if Respondent No.5 does not get selected to the post of Head of SR Girls High School, she will have to undoubtedly vacate the post but no recoveries from her pay shall be made as she has already discharged the responsibilities of the said post. In case the Petitioner is selected for the said post of Assistant Head Mistress in the fresh selection process, she will be entitled to claim her seniority in the said post w.e.f. 1-10-1989 and in the post of Head Mistress from the date Respondent No.5 was appointed but she will not be entitled to claim any arrears in salary.

20. Rule made absolute accordingly with no order as to costs.

(B.H.MARLAPALLE,J)